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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No : 09/673,937 Confirmation No.: 9019
Applicant  : Toshiyuki BABA et al.
Filed : October 24, 2000
TC/AU : 1654
Examiner : M. Meller

Docket No. : 00:117
Customer No. : 02119

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Date: March 10, 2004

APPELLANTS' REPLY BRIEF

Sir:

This Reply Brief is filed in support of the Notice of Appeal filed on
September 26, 2003, and to make sure that the issues of the appeal are stated as
succinctly as possible.

This Reply Brief is transmitted in triplicate.

REMARKS

On page 6 of the Examiner's Answer, the examiner has set forth a clear statement of the 35 USC 112 rejection. It must be noted that, as agreed by the examiner, the specification supports using valine at a concentration of 0.5 to 100 mmol/L. This is a broader range than is recited in claims 29, 48 and 61. If the specification supports a broader range for valine than is recited in claims 29, 48 and 61, then clearly the specification supports the narrower range as is recited for valine in claims 29, 48 and 61.

With regard to proline the argument is the same. The specification recites a broader range, 0.5 to 500 mmol/L, and this clearly includes a more narrow range, "less than 100 mmol/L and not less than 0.5 mmol/L" as recited in claim 42.

Since for each of valine and proline, the specification discloses a range which is broader than, and which broader range includes all of the values as set forth in claims 29, 42, 48 and 61, it is simply illogical to say that the disclosed range does not support the narrower range of these claims.

With regard to the 35 USC 103 rejections, the examiner has agreed that none of the references teach using valine and proline together as is recited in claims 35-40, 53-57, 59 and 62. Clearly it is only the examiner's speculation that using the two together is obvious, as none of the prior art teaches using the two together.

The Segal references teach using one or the other of valine and proline, by themselves, at a concentration of 100 mmol/L. There is no teaching in either Segal

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reference, nor in any of the other references, to use either at a concentration of less than 100 mmol/L, and thus clearly 29, 42, 48-52 and 61 define over the teachings of any of the references. With no teaching of the claimed concentrations in any of the prior art, it is again only the examiner's speculation that using the concentrations as recited in these claims is obvious.

In the third paragraph of page 7 the examiner has succinctly stated the position of the 35 USC 103 rejection. Appellants firmly believe that the steps necessary to call the invention as recited in the claims obvious are not taught by the prior art but rather come from speculation by the examiner. The prior art does not teach that it would be obvious to combine the teachings of the references to make the invention as recited in the claims.

For the above reasons it is respectfully asserted that the examiner's rejections should be reversed.

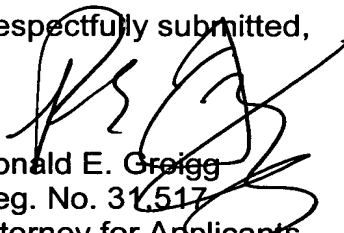
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